

Jan 28, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSE CONTRERAS,

Plaintiff,

v.

WASHINGTON STATE
DEPARTMENT OF
CORRECTIONS,

Defendant.

NO: 2:18-CV-369-RMP

ORDER DISMISSING ACTION

1915(g)

By Order filed November 25, 2019, the Court granted a fourth and final extension of time to amend the Complaint in this action or to file a Motion to Voluntarily Dismiss. ECF No. 21. The deadline for Plaintiff to amend or voluntarily dismiss his complaint was December 23, 2019. He did not do so. Rather, on December 30, 2019, Plaintiff filed yet another Motion for Extension of Time, ECF No. 22, asserting that a box of his legal files is being shipped to him.

Plaintiff filed his initial complaint in this action more than one year ago, on

1 November 28, 2018. ECF No. 1. The only named Defendant, Washington State
2 Department of Corrections, is not a “person” amenable to suit under 42 U.S.C. §
3 1983. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989). Furthermore,
4 Plaintiff’s factual allegations did not state a First Amendment claim under *Shakur*
5 *v. Schriro*, 514 F.3d 878, 884-85 (9th Cir. 2008).

6 Despite generous extensions of time, Plaintiff has failed to amend his
7 complaint to state a claim upon which relief may be granted. Accordingly, for the
8 reasons set forth above and in the Order to Amend or Voluntarily Dismiss, ECF
9 No. 12, **IT IS ORDERED** that the Complaint, ECF No. 1, is **DISMISSED with**
10 **prejudice** for failure to state a claim upon which relief may be granted under 28
11 U.S.C. §§ 1915(e)(2) and 1915A(b)(1). Plaintiff’s pending Motion for Extension
12 of Time, ECF No. 22, is **DENIED AS MOOT**.

13 Pursuant to 28 U.S.C. § 1915(g) a prisoner who brings three or more civil
14 actions or appeals which are dismissed as frivolous or for failure to state a claim
15 will be precluded from bringing any other civil action or appeal *in forma pauperis*
16 “unless the prisoner is under imminent danger of serious physical injury.” 28
17 U.S.C. § 1915(g). **Plaintiff is advised to read the statutory provisions of 28**
18 **U.S.C. § 1915. This dismissal of Plaintiff’s complaint may count as one of the**
19 **three dismissals allowed by 28 U.S.C. § 1915(g) and may adversely affect his**
20 **ability to file future claims in forma pauperis.**

1 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
2 Order, enter Judgment, provide a copy to Plaintiff, and **CLOSE** this file. The
3 District Court Clerk is further directed to provide a copy of this Order to the Office
4 of the Attorney General of Washington, Corrections Division. The Court certifies
5 that any appeal of this dismissal would not be taken in good faith.

6 | DATED January 28, 2020.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
United States District Judge